



THE COMMON COUNCIL

Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
540-667-1815
TDD 540-722-0782
www.winchesterva.gov

**AN ORDINANCE TO INITIATE AND ESTABLISH THE PROCESS FOR
GRANTING A FRANCHISE BY THE CITY OF WINCHESTER, VIRGINIA, TO
PROVIDE A CITY-WIDE WIRELESS NETWORK FOR INTERNET ACCESS
AND TO USE THE PUBLIC RIGHT-OF-WAY AND OTHER PUBLIC PLACES
IN FURTHERANCE THEREOF.**

THE CITY COUNCIL OF WINCHESTER HEREBY ORDAINS:

Section 1. That the City of Winchester proposes to grant a franchise, in the manner prescribed by law, permitting the design, construction, maintenance, and operation of a city-wide wireless network in the public right-of-way and on other public property, as set forth in the following proposed franchise ordinance:

AN ORDINANCE to grant to _____, its successors and assigns, a franchise, under certain conditions, permitting the grantee to use the public right-of-way and on other public property in the City of Winchester, for the design, construction, maintenance, and operation of a city-wide wireless network for Internet access and other purposes, for the benefit of residents, businesses, and government in the City of Winchester.

THE CITY COUNCIL OF WINCHESTER HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to _____ (hereinafter referred to as Grantee), its successors and assigns, to permit the Grantee to design, construct, maintain, and operate a city-wide wireless network for Internet access and other purposes, using the public right-of-way and other public property in the City of Winchester (hereinafter referred to as the City).

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. ____, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

Section 3. That the Grantee be, and hereby is, granted a Franchise for ____ years to design, construct, maintain, and operate a city-wide wireless network for Internet access and other purposes, for the benefit of residents, businesses, and government in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City, the Commonwealth of Virginia (hereinafter referred to as the

Commonwealth), and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

1. Each year an updated map of all facilities within the City existing and proposed, showing locations, scheduled construction and service dates, and such additional information as the City Manager may specify in his reasonable discretion, shall be filed with the City Director of Information Technology.
2. All necessary permits shall be obtained for each and every excavation or installation, including, but not limited to, boring in and/or under a public right-of-way or other public place.
3. In the event the relocation, construction, reconstruction, maintenance, or repair by the City or the Commonwealth of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public right-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter, or relocate its property at its own cost and expense, and should the Grantee fail to comply with such notice, its property may be removed, altered, or relocated by the City or Commonwealth at the cost of the Grantee and without liability for any resulting damage. The Grantee will do everything reasonably necessary, in a timely manner, to prevent any delays in construction projects of the City or the Commonwealth.
4. This Franchise may be assigned or transferred; provided, however, that no such assignment or transfer shall be effective without the prior written consent of the City, which consent will not be unreasonably withheld.
5. The Grantee will obtain liability insurance to the satisfaction of the City, which insurance shall name the City as an additional insured.
6. The Grantee will not use the privileges granted by this Franchise to provide the functional equivalent ~~of a cable system or cable service.~~ *video services licensed by the Federal Communications Commission that are provided by a cable system or cable service.*
7. In exchange for the privileges granted by this Franchise, the City shall have free use of the network for municipal governmental purposes.
8. In exchange for the privileges granted by this Franchise, the general public shall have free use of the network for wireless Internet access in the outdoor areas and public facilities in the City designated in the Franchise Agreement.

9. At such time as the City may require underground installation of existing overhead facilities in any area covered by this Franchise, the Grantee will, at its sole cost and expense, relocate its facilities underground in accordance with the provisions of the City's underground utilities ordinance, to the extent underground location of such facilities is deemed technically feasible by the City.
10. The Grantee shall protect all property of the City or any other person during any work of designing, constructing, maintaining, or operating its system in or adjacent to the public right-of-way or other public place, and shall fully restore, in kind, any property damaged or destroyed during any such work. In the event the Grantee and any property owner are unable to agree on a remedy, the Grantee agrees to abide by the determination of the City as to compensation or restoration.
11. Nothing in this Franchise shall be construed to obligate the City to continue its franchise with any other franchisee who owns or uses the poles to be used by the Grantee, nor shall this Franchise increase or strengthen the rights that other franchisees may have. The City shall have no liability to the Grantee for exercising any rights the City may have in general or under its franchises with other franchisees, regardless of the effect of such exercise on the Grantee.
12. The Grantee shall remove its property at its own expense at the expiration or termination of this Franchise or any extension hereof.

Section 4. That the City Manager be and hereby is authorized to execute such documents as may be required to effectuate the Franchise hereby granted.

Section 5. That the City Clerk be and hereby is authorized to attest the execution of said documents and to affix thereon the official seal of the City.

Section 2. That as soon as this Ordinance has been finally passed, the City Clerk shall cause to be advertised once a week for four successive weeks in a newspaper published in the City of Winchester, a descriptive notice of the proposed ordinance contained in Section 1 of this Ordinance, and, in addition thereto, shall by such advertisement invite bids for the Franchise proposed to be granted by such proposed ordinance, by publishing with the descriptive notice of such ordinance a notice which shall be in substantially the following form:

NOTICE

Proposals are invited by the City of Winchester, Virginia, for the grant of a franchise permitting the franchisee to use the public right-of-way and other public places in the City for the design, construction, maintenance, and operation of a city-wide wireless network for Internet access and other purposes, for the benefit of residents, businesses, and government in the City. Detailed conditions and specifications for the franchise are on file in the Finance Department - Purchasing

Division, 15 North Cameron Street, 1st Floor - Rouss City Hall, Winchester, Virginia 22601. All documents relating to this franchise are also available for review at:

winchesterva.gov/wirelesswinchester

A non-mandatory pre-proposal conference will be held at 10:00 a.m. March 30, 2007. The location for this conference is:

City of Winchester
Council Chambers
Rouss City Hall
15 N. Cameron Street
Winchester, VA 22601

The term of the franchise is negotiable, but it shall be more than 5 years and less than 30 years.

All bids are to be submitted in writing and delivered to Steve Corbit Purchasing Agent, Finance Department - Purchasing Division, 15 North Cameron Street, 1st Floor - Rouss City Hall, Winchester, Virginia 22601 on or before the preferred deadline of 2:00 p.m. Tuesday May 8, 2007. The identity of the bidders will be announced at that time. Bids will not be unsealed until after the Council President closes the receiving period at the City Council meeting described below.

In addition, identification of the bidders shall be announced in open session of the Common Council for the City of Winchester in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, VA 22601, on May 8, 2007, at 7:30 p.m. At that time, the President shall ask if there are additional bids and shall refer the bids received to the City Manager to evaluate, review, and consider in the manner prescribed by law, including the selection of, and negotiation of a franchise agreement with, a preferred bidder. As soon thereafter as practicable, the City Manager will recommend the successful bidder, and present the negotiated franchise agreement, for consideration and approval by Common Council for the City of Winchester.

The City of Winchester reserves the right, in the City Manager's sole discretion, to reject any and all bids; to terminate negotiations at any stage of the selection process; and to reissue the request for bids with or without modification.

The descriptive notice of the proposed franchise ordinance is as follows:

"The proposed ordinance will grant a franchise, under certain conditions, permitting the grantee to use the public right-of-way and on other public property in the City of Winchester, for the design, construction, maintenance, and operation of a city-wide wireless network for Internet access and other purposes, for the benefit of residents, businesses, and government in the City of Winchester. (Complete text of ordinance available in office of the city clerk.)

Section 3. That this ordinance shall become effective on the date and at the time of its final passage."

ORDINANCE NO. XX-2007.